



INTERIOR BOARD OF INDIAN APPEALS

Sharon Wasson, Thomas Wasson, Andrea Davidson, and Elverine Castro
v. Western Regional Director, Bureau of Indian Affairs

38 IBIA 255 (12/24/2002)

Related Board cases:

38 IBIA 205

39 IBIA 174

42 IBIA 141



United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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SHARON WASSON, THOMAS WASSON,
ANDREA DAVIDSON, and ELVERINE
CASTRO,

Appellants

v.

WESTERN REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,

Appellee

: Order Docketing and Dismissing
: Appeal without Prejudice
:
:
:
: Docket No. IBIA 03-40-A
:
:
: December 24, 2002

On December 2, 2002, the Board of Indian Appeals received a notice of appeal from Sharon Wasson, Thomas Wasson, Andrea Davidson, and Elverine Castro (Appellants). For the reasons discussed below, the Board docketed this appeal and dismisses it without prejudice.

This appeal is related to an earlier appeal filed by the same Appellants. The Board dismissed that appeal on November 6, 2002, after Appellants failed to respond to an order to show cause issued by the Board. Wasson v. Western Regional Director, 38 IBIA 205 (2002). As they did in the earlier appeal, Appellants stated in their new notice of appeal that they were appealing “regarding the failure of the [Western] Regional Office of the Bureau of Indian Affairs to recognize the designated Council of the Winnemucca Indian Colony.” Nov. 25, 2002, Notice of Appeal at 2. This time, however, they attached to their notice of appeal, along with a number of other documents, a copy of an October 28, 2002, decision issued by the Western Regional Director, which addressed matters related to a tribal governmental dispute within the Winnemucca Indian Colony. The Board therefore construed Appellants’ new notice of appeal as an appeal from the Regional Director’s October 28, 2002, decision, rather than an appeal under 25 C.F.R. § 2.8, “Appeal from inaction of official.” ^{1/}

^{1/} To the extent Appellants may have intended to appeal under 25 C.F.R. § 2.8, they failed to show that they took the steps required by that provision.

The Regional Director's decision referred to a case then pending in the United States District Court for the District of Nevada, Magiera v. Norton, CV-N-01-0467-LHN (VCP). His statements suggested that the matter at issue in that case was related to the matter at issue here. Therefore, the Board asked the Regional Director to advise the Board as to the relation between the two cases.

In his response, the Regional Director informs the Board that three of the Appellants here, Thomas Wasson, Andrea Davidson, and Elverine Castro, are also plaintiffs in Magiera. He states that the District Court dismissed Magiera on November 7, 2002. He furnishes a copy of the November 7, 2002, order, which shows that the plaintiffs' claims were dismissed without prejudice subject to "reinstatement following exhaustion of administrative remedies, assuming the Plaintiffs can show valid grounds for jurisdiction." Nov. 7, 2002, Order in Magiera at 16.

The Regional Director also informs the Board that the Magiera plaintiffs have appealed the District Court's November 7, 2002, order to the United States Court of Appeals for the Ninth Circuit. He furnishes a copy of their November 27, 2002, notice of appeal.

The Regional Director states that Appellants' present appeal, "while related, may not be the same claim as that pending in the Ninth Circuit Court of Appeals, if the appeal to this Board is limited to facts that occurred after the August 8, 2001, filing of the Complaint in [Magiera]." Regional Director's Response at 5.

It is apparent that this appeal arises out of the same intra-tribal dispute that gave rise to Magiera—a dispute described by the District Court as "a power struggle between two factions of the Winnemucca Indian Tribe for control over the Winnemucca Tribal Council," Nov. 7, 2002, Order in Magiera at 1, and further described as "lengthy and bitter: including, numerous lawsuits (in Tribal courts as well as Federal court), arrests, restraining orders, threats, and a murder that are all alleged to be related to the intra-Tribal conflict." Id. at 2.

The real issues in this appeal arose long before the Magiera plaintiffs filed their complaint on August 8, 2001. The Board sees no realistic possibility that this appeal could be limited to events which took place after that date. If the Board were to retain jurisdiction here, it would stay proceedings in this appeal until the Federal court case has been concluded.

Under the circumstances, however, the Board finds that this appeal should be dismissed without prejudice. A dismissal at this time will give the parties freedom, once the Federal court case has been concluded, to proceed on the basis of the situation as it then exists, rather than await action by the Board on a Regional Director's decision which, by then, may well have been overtaken by events.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but is dismissed without prejudice.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge